

531

2013-2014 Regular Sessions

I N   S E N A T E

(PREFILED)

January 9, 2013

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Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to third party notification by insurance carriers in certain instances in regard to long term care policies; prohibiting the inclusion of certain goods and services in the sale of certain insurance policies without the insured's informed consent, and providing a specific penalty for violation of such prohibition

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subsection (f) of section 3111 of the insurance law, as  
2     relettered by section 30 of part B of chapter 58 of the laws of 2004, is  
3     relettered subsection (g) and a new subsection (f) is added to read as  
4     follows:  
5     (F) EVERY INSURER THAT HAS IN FORCE A LONG-TERM CARE INSURANCE POLICY  
6     AS DEFINED IN SECTION ONE THOUSAND ONE HUNDRED SEVENTEEN OF THIS CHAPTER  
7     THE PREMIUMS FOR WHICH ARE PAID DIRECTLY TO THE INSURER BY THE SENIOR  
8     CITIZEN INSURED SHALL PERMIT THE INSURED TO DESIGNATE A PARTY TO WHOM  
9     THE INSURER SHALL TRANSMIT NOTICES OF NONPAYMENT OF PREMIUMS DUE OR  
10    NOTICE OF CANCELLATION FOR NONPAYMENT OF PREMIUMS, AS DETERMINED BY THE  
11    INSURER. THE SENIOR CITIZEN SHALL NOTIFY THE INSURER THAT A THIRD PARTY  
12    HAS BEEN SO DESIGNATED. SUCH NOTIFICATION SHALL BE DELIVERED TO THE  
13    INSURER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND SHALL BE EFFEC-  
14    TIVE NOT LATER THAN TEN BUSINESS DAYS FROM THE DATE OF RECEIPT BY THE  
15    INSURER. THE NOTIFICATION MUST CONTAIN, IN WRITING, AN ACCEPTANCE BY THE  
16    THIRD PARTY DESIGNEE TO RECEIVE SUCH NOTICES OF CANCELLATION. SHOULD THE  
17    THIRD PARTY DESIGNEE DESIRE TO TERMINATE HIS OR HER STATUS AS A THIRD  
18    PARTY DESIGNEE, SUCH DESIGNEE SHALL PROVIDE WRITTEN NOTICE TO BOTH THE  
19    INSURER AND THE SENIOR CITIZEN INSURED. SHOULD THE SENIOR CITIZEN  
20    INSURED DESIRE TO TERMINATE THE THIRD PARTY DESIGNATION, THE INSURED

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 SHALL PROVIDE WRITTEN NOTICE TO THE INSURER. THE TRANSMISSION TO THE  
2 THIRD PARTY DESIGNEE OF ANY SUCH NOTICE OF CANCELLATION SHALL BE IN  
3 ADDITION TO A COPY OF SUCH DOCUMENT TRANSMITTED TO THE SENIOR CITIZEN  
4 INSURED AND WHEN A THIRD PARTY IS SO DESIGNATED ALL SUCH NOTICES SHALL  
5 BE MAILED IN AN ENVELOPE CLEARLY MARKED ON ITS FACE WITH THE FOLLOWING:  
6 "IMPORTANT INSURANCE POLICY INFORMATION: OPEN IMMEDIATELY". DESIGNATION  
7 AS A THIRD PARTY SHALL NOT CONSTITUTE ACCEPTANCE OF ANY LIABILITY ON THE  
8 THIRD PARTY FOR SERVICES PROVIDED TO SUCH SENIOR CITIZEN. THE INSURER  
9 SHALL NOTIFY ITS INSURED SENIOR CITIZEN ANNUALLY IN WRITING OF THE  
10 AVAILABILITY OF THE THIRD PARTY DESIGNEE NOTICE PROCEDURE AND PROVIDE  
11 INFORMATION ON HOW THE INSURED CAN COMMENCE THIS PROCEDURE; HOWEVER,  
12 SUCH NOTICE NEED NOT BE PROVIDED ONCE A SENIOR CITIZEN HAS MADE A DESIG-  
13 NATION.

14 S 2. Subsection (a) of section 2324 of the insurance law, as amended  
15 by chapter 291 of the laws of 2012, is amended to read as follows:

16 (a) (1) No authorized insurer, no licensed insurance agent, no  
17 licensed insurance broker, and no employee or other representative of  
18 any such insurer, agent or broker shall make, procure or negotiate any  
19 contract of insurance other than as plainly expressed in the policy or  
20 other written contract issued or to be issued as evidence thereof, or  
21 shall directly or indirectly, by giving or sharing a commission or in  
22 any manner whatsoever, pay or allow or offer to pay or allow to the  
23 insured or to any employee of the insured, either as an inducement to  
24 the making of insurance or after insurance has been effected, any rebate  
25 from the premium which is specified in the policy, or any special favor  
26 or advantage in the dividends or other benefit to accrue thereon, or  
27 shall give or offer to give any valuable consideration or inducement of  
28 any kind, directly or indirectly, which is not specified in such policy  
29 or contract, other than any valuable consideration, including but not  
30 limited to merchandise or periodical subscriptions, not exceeding twen-  
31 ty-five dollars in value, or shall give, sell or purchase, or offer to  
32 give, sell or purchase, as an inducement to the making of such insurance  
33 or in connection therewith, any stock, bond or other securities or any  
34 dividends or profits accrued thereon, nor shall the insured, his OR HER  
35 agent or representative knowingly receive directly or indirectly, any  
36 such rebate or special favor or advantage, provided, however, a licensed  
37 insurance agent or a licensed insurance broker may retain the usual  
38 commission or underwriting fee on insurance placed on his OR HER own  
39 property or risks, if the aggregate of such commissions or underwriting  
40 fees will not exceed five percent of the total net commissions or under-  
41 writing fees received by such licensed insurance agent or insurance  
42 broker during the calendar year.

43 (2) NO AUTHORIZED INSURER, NO LICENSED INSURANCE AGENT, NO LICENSED  
44 INSURANCE BROKER, AND NO EMPLOYEE OR OTHER REPRESENTATIVE OF ANY SUCH  
45 INSURER, AGENT OR BROKER SHALL INCLUDE WITH THE SALE OF AN INSURANCE  
46 POLICY ANY OTHER INSURANCE POLICY OR PRODUCT OR OTHER GOODS AND SERVICES  
47 WITHOUT FIRST OBTAINING THE INFORMED CONSENT OF THE PROPOSED INSURED.

48 S 3. Subsection (f) of section 2324 of the insurance law is amended to  
49 read as follows:

50 (f) (1) Any person or corporation violating the provisions of this  
51 section shall, in addition to all other penalties provided by law, pay  
52 to the people of this state as a penalty the sum of five hundred dollars  
53 for each such violation.

54 (2) ANY PERSON OR CORPORATION VIOLATING THE PROVISIONS OF PARAGRAPH  
55 TWO OF SUBSECTION (A) OF THIS SECTION SHALL, IN ADDITION TO ALL OTHER

1 PENALTIES PROVIDED BY LAW, PAY A FINE IN THE SUM OF ONE THOUSAND DOLLARS  
2 FOR EACH SUCH VIOLATION.

3 S 4. Subsection (c) of section 4224 of the insurance law, as amended  
4 by chapter 291 of the laws of 2012, is amended to read as follows:

5 (c) (1) Except as permitted by section three thousand two hundred  
6 thirty-nine of this chapter, no such life insurance company and no such  
7 savings and insurance bank and no officer, agent, solicitor or represen-  
8 tative thereof and no such insurer doing in this state the business of  
9 accident and health insurance and no officer, agent, solicitor or repre-  
10 sentative thereof, and no licensed insurance broker and no employee or  
11 other representative of any such insurer, agent or broker, shall pay,  
12 allow or give, or offer to pay, allow or give, directly or indirectly,  
13 as an inducement to any person to insure, or shall give, sell or  
14 purchase, or offer to give, sell or purchase, as such inducement, or  
15 interdependent with any policy of life insurance or annuity contract or  
16 policy of accident and health insurance, any stocks, bonds, or other  
17 securities, or any dividends or profits accruing or to accrue thereon,  
18 or any valuable consideration or inducement whatever not specified in  
19 such policy or contract other than any valuable consideration, including  
20 but not limited to merchandise or periodical subscriptions, not exceed-  
21 ing twenty-five dollars in value; nor shall any person in this state  
22 knowingly receive as such inducement, any rebate of premium or policy  
23 fee or any special favor or advantage in the dividends or other benefits  
24 to accrue on any such policy or contract, or knowingly receive any paid  
25 employment or contract for services of any kind, or any valuable consid-  
26 eration or inducement whatever which is not specified in such policy or  
27 contract.

28 (2) NO SUCH LIFE INSURANCE COMPANY AND NO SUCH SAVINGS AND INSURANCE  
29 BANK AND NO SUCH INSURER DOING IN THIS STATE THE BUSINESS OF ACCIDENT  
30 AND HEALTH INSURANCE AND NO OFFICER, AGENT, SOLICITOR OR REPRESENTATIVE  
31 THEREOF AND NO LICENSED INSURANCE BROKER AND NO EMPLOYEE OR OTHER REPRE-  
32 SENTATIVE OF ANY SUCH INSURER, AGENT OR BROKER SHALL INCLUDE WITH THE  
33 SALE OF AN INSURANCE POLICY ANY OTHER INSURANCE POLICY OR PRODUCT OR  
34 OTHER GOODS AND SERVICES WITHOUT FIRST OBTAINING THE INFORMED CONSENT OF  
35 THE PROPOSED INSURED.

36 S 5. Section 4224 of the insurance law is amended by adding a new  
37 subsection (f) to read as follows:

38 (F) ANY PERSON OR CORPORATION VIOLATING THE PROVISIONS OF PARAGRAPH  
39 TWO OF SUBSECTION (C) OF THIS SECTION SHALL IN ADDITION TO ALL OTHER  
40 PENALTIES PROVIDED BY LAW PAY A FINE IN THE SUM OF ONE THOUSAND DOLLARS  
41 FOR EACH SUCH VIOLATION.

42 S 6. This act shall take effect immediately, except that section one  
43 of this act shall take effect on the first of January next succeeding  
44 the date on which it shall have become a law and shall apply to policies  
45 issued or renewed on or after such date.